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occasional work in a manner fair to all parties. So also would such effect be desirable where a foreign state has no compensation act.

The objection might be made to such extraterritorial effect that if an employment is regularly in two states which have compulsory insurance plans, both might compel insurance for the whole employment, and the employer would be charged double premiums. Such an objection would, however, be equally applicable where acts were merely territorial in effect, because in most statutes premiums are based, not on time of work, but on the type of employment and amount of wages.⁷ Extraterritorial effect might conceivably result in recovery of insurance in both states on the analogy of accident insurance law. But this is not objectionable as unduly enriching the employee, since the pecuniary damage is so conjectural that it is perhaps impossible to ever say that the insured is fully indemnified by the recovery of money.⁸

It would seem that there would not be the objection that extraterritorial effect would allow a recovery of insurance in one state and *ex delicto* in another, because the recovery of insurance, even under a compulsory act, would seem to impliedly involve the release of the right *ex delicto*. If, however, an employee under a compulsory act should choose not to enforce his insurance right, he would certainly be free to exercise his right *ex delicto* in another state.⁹ The employer would thus be a loser to the amount of the premium which was to cover that particular extraterritorial risk. This difficulty would not arise under acts the application of which is optional and which involve an express relinquishment of other rights.¹⁰

Another difficulty is that compelling the employer to pay premiums for accidents happening in states having no compensation act is depriving him of defenses to which he is entitled. This is justifiable, however, on the economic theory of the Workmen's Compensation Acts, which is that the burden of accidents is being put on the consumer by means of the employer's absolute liability.¹¹ There may be other difficulties due to the provisions of different acts. And since the cases where extraterritorial effect is desirable will cease to arise as the adoption of such acts becomes universal, it is perhaps wiser to confine their application to territorial accidents.

VALIDITY OF CONTRACT INVOLVING BREACH OF PRIOR CONTRACT. — It is generally recognized that intentionally to induce a breach of con-

⁷ An equitable result could be reached in either case by each state charging in proportion to the risk within its borders. This is analogous to the plan of taxation in *Pullman Co. v. Penn.*, 141 U. S. 18.

⁸ See 26 HARV. L. REV. 377. Cf. *Ætna Life Ins. Co. v. Parker*, 96 Tex. 287, 72 S. W. 168. Cf. *contra*, 2 MAY, INSURANCE, 4 ed., p. 1051.

⁹ *Schweitzer v. Hamburg American Freight Co.*, 78 Misc. Rep. 448, 138 N. Y. Supp. 944, is not *contra*. It relies on the doctrine that the relation of master and servant having its inception in a contract is governed by the law where it was made. This is anomalous. See 2 WHARTON, CONFLICT OF LAWS, 3 ed., pp. 1098, 1103. It is indulging in fictions unless the employee has actually contracted away his rights *ex delicto*.

¹⁰ 2 WHARTON, CONFLICT OF LAWS, 3 ed., p. 1105. Since an insurance right is substituted, such a defense would scarcely be against public policy. See 26 HARV. L. REV. 459. An example of such an act is MASS. ACTS, 1911, chap. 751, Part I, § 5.

¹¹ 25 HARV. L. REV. 131.

tract is a tort.¹ But judicial decisions have thrown little light on the supplemental question whether a contract is legal and enforceable, which involves, the breach of a prior contract already binding on one of the parties.

Where the contract expressly demands as its consideration the breach of a prior contract, it is clearly illegal, on the principle that the actual consideration is a civil injury to a third person.² If the consideration stipulated for, however, is not an injury in itself, but merely involves some collateral wrong, such a contract cannot be unenforceable strictly because of the consideration. If unenforceable, it must be so because of public policy.

Under this type of contract where the consideration itself is not illegal, several situations arise. If the breach of the prior contract occurs before the making of the second one, there is no illegality involved in the new contract itself, for it could not possibly have been the cause of the prior breach. The wrong to the third person is separable from the contract, which thus remains enforceable by either party; for it is no defense to an action on a contract that the plaintiff has committed an independent tort. This would seem generally true; but an exception exists even here. Where the breach occurs prior to the second contract, but is committed on the agreement that a contract will follow, it would seem clear that the agreement at the breach is illegal, and that the illegality would taint a contract which was the direct product of the agreement.³

Where the two contracts are concurrent, and the performance called for by the second contract is not inconsistent with the performance of the first, the second contract is valid, even though there was also an inducement to a breach of the first contract. The contract itself did not cause, or tend proximately to cause, the damage to the third person. The injury was *dehors* the contract, and the fact that the two parties committed an injury independent of the performance of the contract does not invalidate it.⁴

In the two preceding types of cases, the breach of the first contract occurred prior to the contract in question, or was independent of it; the result is that the contract may be enforced by either party. A third situation may arise where the performance of the second contract necessarily makes impossible the carrying out of the first, and is made with knowledge of the harm that it must cause. A recent case holds that where A., with knowledge of the consequences, induced B. to enter into a contract the performance of which would necessarily involve the breach of one already existing between B. and C., A. may not recover for non-performance. *Wanderers Hockey Club v. Johnson*, 25 West. L. R. 434 (Brit.

¹ *Lumley v. Gye*, 2 E. & B. 216; *Angle v. Chicago, St. P., M. & O. Ry. Co.*, 151 U. S. 1. The existence of this liability is denied in several jurisdictions, however. *Boyson v. Thorn*, 98 Cal. 578, 33 Pac. 492; *Chambers v. Baldwin*, 91 Ky. 121, 15 S. W. 57; *Glencoe Land & Gravel Co. v. Hudson Bros. Commission Co.*, 138 Mo. 439, 40 S. W. 93. The liability is limited to cases of misrepresentation or coercion in New York and Indiana. *Ashley v. Dixon*, 48 N. Y. 430; *Jackson v. Morgan*, 94 N. E. 1021 (Ind.).

² A common instance is a contract to publish a libel. *Shackell v. Rosier*, 2 Bing. N. C. 634. See 21 HARV. L. REV. 290.

³ Cf. *Fisher v. Bridges*, 3 E. & B. 642.

⁴ Cf. *Armstrong v. Toler*, 11 Wheaton, 258.

Col.). The result seems clearly correct. By means of the contract, A. attempts to commit a tort on C. It is well settled that a contract which will interfere with fiduciary relations is unenforceable, as tending to cause a tort on third persons.⁵ So also a contract in fraud of creditors.⁶ The same public policy should make invalid a contract which, to the knowledge of the parties, necessitates the breach of a prior contract.⁷ The fact that there is knowledge of the prior contract is an important element, where the performances of the two contracts are mutually exclusive. If the party in the second contract were ignorant of the existence of the first, he should recover for breach of the second contract. It is a general rule that where the immediate consideration is not unlawful, and the illegality consists alone in an intention of one of the parties, unknown to the other, the innocent party is entitled to damages for a breach of the contract.⁸

TAXATION OF FOREIGN CORPORATIONS. — Although the taxation of corporations outside of the jurisdiction in which they are incorporated presents many difficult problems, there are certain rules which seem definitely established. Property within the jurisdiction may be taxed even though the corporation owning it be engaged in interstate commerce.¹ Though a state may not tax the right of a foreign corporation to do interstate business in its jurisdiction,² it may require as large a tax as it chooses as payment for the permission to come into the state and there carry on a local business. This follows because a state may exclude such corporations entirely, since not being citizens under Article IV, § 2, of the Constitution, they may not claim rights and privileges equal to those enjoyed by domestic corporations.³ Since the tax is the price of the privilege of doing business, the basis upon which the amount is estimated makes no difference. Thus it is valid when estimated upon the entire capital stock of the corporation.⁴ The same result would follow where a corporation engaged in interstate commerce sought the privilege of doing a local business separate from that of an interstate nature.⁵

A more difficult question is presented when the corporation has been admitted into the state, has established a business and acquired property.

⁵ *Guernsey v. Cook*, 120 Mass. 501; *Noel v. Drake*, 28 Kans. 265.

⁶ *Leicester v. Rose*, 4 East 372.

⁷ This would seem to be true, even though the second contract was not the sole cause of the breach of the first contract. Thus, B. makes an offer to contract with A., saying that at all events he will break his prior contract with C.; whereupon A. enters into the contract. The contract, it is submitted, is unenforceable, because it tended to cause a breach of the first contract. If a breach occurred, this second contract would be a proximate cause.

⁸ *Pixley v. Boynton*, 79 Ill. 351. See WALD'S *POLLOCK ON CONTRACTS*, p. 485.

¹ *Atlantic & Pacific Tel. Co. v. Philadelphia*, 190 U. S. 160, and cases therein cited.

² *International Text Book Co. v. Pigg*, 217 U. S. 91.

³ *Paul v. Virginia*, 8 Wall. (U. S.) 168.

⁴ *Pembina Mining Co. v. Pa.*, 125 U. S. 181; *Horn Silver Mining Co. v. New York*, 143 U. S. 305.

⁵ The converse of this situation, where the local business was inseparable, was presented in *Western Union Tel. Co. v. Kansas*, 216 U. S. 1, and the tax held an unconstitutional regulation of interstate commerce.